IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4841 OF 2004.

1 .M/s Omega Investment & Properties Ltd.
2. Mr. Kailash Chandra Sethi .. Applicants.
V/s
1. M/s Allied Capital Services Ltd.
2. Golf Link Union Part, Mumbai ..Respondents.

Mr. A.P. Mundargi i/b Mr. A.M. Bhatia for the applicants.

Mr. V.B. Naik for respondent No.1.

Mr. S.S. Pednekar, A.P.P. for the State.

CORAM : S.C. DHARMADHIKARI, J.
DATE : 24TH AUGUST, 2006.

P.C.

. The applicants are the original accused in Complaint Case No.103/S/1997 filed in the Court of Additional Chief Metropolitan Magistrate, 9th Court Bandra, Mumbai alleging offences punishable under Sections 138 and 141 of Negotiable Instruments Act, 1981 as amended.

2. The submission of Mr. Mundargi, the learned Sr. Counsel appearing for the applicants in support of his prayer for quashing of the proceeding, is that on 25th April, 1996 the respondent-original-complainant

addressed a letter to the applicants/accused pointing out that the cheques presented were not honoured. The notice states that the respondent would wait for another 48 hours for arrangement of funds by the acucsed/applicants, failing which they will take necessary action.

3. His further submission is that the complaint is based upon a notice dated 23rd August,1996, in which a clear reference is made to the dishonour of the cheques on 23rd April, 1996. However, the cheques represented on 13th August, 1996, were dishonoured on 18th August, 1996 for insufficient funds. Therefore, relying upon a Judgment of Hon'ble Supreme Court reported in Sadanandan Bhadran V. Mahdavan Sunil Kumar **(1998 ALL MR (Cri) 1613**, he submits that once cheques were dishonoured in April, 1996 and no complaint was filed within the stipulated period, then merely because the cheques were represented in August, 1996 and dishonoured again and notice issued thereafter, does not mean that the complaint is within the prescribed period of limitation.

4. In this case, complainant alleges that the accused had forwarded two post dated cheques in favour

of the respondent/complainant, both dated 22nd April, 1996 and thereafter requested the respondent/complainant by letters not to deposit the same on their due dates. The averment in paras 8 and 10 of the complaint is that the complainant presented the cheques pursuant to the request in August 1996, but they were dishonoured on 16th August, 1996. There upon the notice was served and it called upon the accused to make payment within 15 days from the receipt thereof.

5. After the grace period was also over, the complaint was filed on 4th October, 1996. In my view, for the contentions of Mr. Mundargi to be examined, the complaint would have to be read as it is and as a whole. In any event, his submission that no offence is made out. That the complaint is not filed within the prescribed period of limitation is something which cannot be gone into in exercise of my jurisdiction under section 482 of Criminal Procedure Code as that would entail examination of the materials which are produced during the course of trial. This is not a case where prima facie complaint does not disclose any cause of action or an offence under aforesaid provisions. On the other hand, the contention is that assuming that the

cheques are dishonoured, the complaint is not instituted within the proscribed statutory period. For such a contention to be tested, it would be proper if all material is made available to the Court during the course of trial. It is not necessary to go into this aspect at the stage of issuance of process. All contentions of both sides in that behalf are always open and by mere issuance of process it is not that the applicants would not be able to urge that the complaint is not filed within the period of limitation. Leaving all contentions open, I decline to interfere with the order of issuance of process.

6. Application is rejected.

7. All interim orders to stand vacated.

(S.C. DHARMADHIKARI, J.)